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UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

No. 15-4117

TAMMY GOBLE, APPELLANT,

v.

ROBERT A. McDONALD,
SECRETARY OF VETERANS AFFAIRS, APPELLEE.

Before LANCE, *Judge*.

MEMORANDUM DECISION

*Note: Pursuant to U.S. Vet. App. R. 30(a),
this action may not be cited as precedent.*

LANCE, *Judge*: The veteran, Karl S. Goble, served in the U.S. Navy from November 1972 to October 1974. Record (R.) at 520. The appellant, Tammy Goble, is the veteran's spouse and designated payee. *See* R. at 4. She appeals, through counsel, a September 16, 2015, Board of Veterans' Appeals (Board) decision that denied an initial disability rating greater than 50% for the veteran's service-connected major depressive disorder (MDD). R. at 2-24. Single-judge disposition is appropriate. *See Frankel v. Derwinski*, 1 Vet.App. 23, 25-26 (1990). This appeal is timely, and the Court has jurisdiction over the case pursuant to 38 U.S.C. §§ 7252(a) and 7266. For the reasons that follow, the Court will vacate the September 16, 2015, decision and remand the matter for further proceedings consistent with this decision.

This case has previously been before the Court on two occasions. First, in June 2011, the Court granted the parties' joint motion for remand (JMR) with respect to an October 2010 Board decision that denied entitlement to an initial disability rating greater than 50% for MDD. R. at 213. According to the JMR, the parties agreed that a remand was required for the Board to provide an adequate statement of reasons or bases to support its determination that the veteran's symptomatology did not more nearly approximate the criteria for the next higher disability rating. R. at 214. The Board subsequently obtained a Veterans Health Administration (VHA) expert

opinion in January 2012; based on those findings, the Board again denied the claim for an increased rating in May 2012. R. at 72-91. The appellant appealed the decision and, in May 2013, the Court again remanded the claim pursuant to a JMR, which directed the Board to request clarification from a suitable expert to distinguish which of the veteran's symptoms resulted from his service-connected psychiatric condition, MDD, and which symptoms resulted from non-service-connected dementia. See R. at 66. The Board accordingly obtained an additional VHA expert opinion in April 2015. R. at 33. Based on the VHA expert's findings, the Board again denied the claim for an increased rating in September 2015. R. at 2-24. This appeal ensued.

The appellant argues that the Board erred when it relied on an inconsistent, contradictory April 2015 VHA expert opinion in denying entitlement to a higher initial rating for MDD. Appellant's Brief (Br.) at 7-12. She contends that a remand is required for the Board to, among other things, "provide adequate reasons and bases regarding which symptoms are attributed to the [v]eteran's service-connected condition." *Id.* at 12. The appellant also asserts that the Board erred when it failed to consider whether the veteran's dementia is secondary to his service-connected MDD. *Id.* at 12-14. The Secretary disputes the appellant's contentions. Secretary's Br. at 7-14.

In *Mittleider v. West*, the Court held that, when a claimant has both service-connected and non-service-connected disabilities, the Board must attempt to distinguish the effects of each disability and, where such distinction is not possible, attribute those effects to the service-connected disability. 11 Vet.App. 181, 182 (1998). As always, the Board's statement of the reasons or bases for its decision "must be adequate to enable a claimant to understand the precise basis for the Board's decision, as well as to facilitate review in this Court." *Allday v. Brown*, 7 Vet.App. 517, 527 (1995).

In this case, the Board mischaracterized the April 2015 VHA expert opinion. Specifically, the Board stated that, "as noted above, the [v]eteran's impaired judgment, poor interpersonal relationships, poor focus, and poor concentration primarily impair the [v]eteran's occupational ability, and such symptoms are the result of his non-service-connected dementia, rather than his service-connected MDD." R. at 18-19. However, the April 2015 VHA expert opinion explicitly stated that the symptoms of "social withdrawal/detachment, poor focus and concentration could be from depression *or* dementia" R. at 33 (emphasis added). The Board recited those findings on the preceding page of its analysis. R. at 18. Thus, at least two—and arguably three—of the four

symptoms that the Board cited as "primarily impair[ing] the [v]eteran's occupational ability," R. at 18-19, and dismissed as resulting solely from his dementia were, to the contrary, characterized by the April 2015 opinion as possibly resulting from either condition, R. at 33. Absent an adequate statement of reasons or bases to support the Board's decision, judicial review is frustrated and remand is necessary. *See* 38 U.S.C. § 7104(d)(1); *Allday*, 7 Vet.App. at 527. The Court will, accordingly, vacate the Board decision and remand the appellant's claim for further proceedings consistent with this decision.

In light of this outcome, the Court will not address the appellant's remaining arguments. *See Quirin v. Shinseki*, 22 Vet.App. 390, 396 (2009) (holding that "the Court will not ordinarily consider additional allegations of error that have been rendered moot by the Court's opinion or that would require the Court to issue an advisory opinion"). On remand, the appellant is free to submit additional evidence and argument, including the arguments raised in her briefs to this Court, in accordance with *Kutscherousky v. West*, 12 Vet.App. 369, 372-73 (1999) (per curiam order), and the Board must consider any such evidence or argument submitted. *See Kay v. Principi*, 16 Vet.App. 529, 534 (2002). The Board shall proceed expeditiously, in accordance with 38 U.S.C. §§ 5109B and 7112 (requiring the Secretary to provide for "expeditious treatment" of claims remanded by the Board or the Court).

After consideration of the parties' briefs and a review of the record, the Board's September 16, 2015, decision is VACATED and the matter is REMANDED to the Board for further proceedings consistent with this decision.

DATED: December 7, 2016

Copies to:

Robert V. Chisholm, Esq.

VA General Counsel (027)